



# Public Notice

**U.S. Army Corps  
Of Engineers  
Galveston District**

|                        |       |                  |
|------------------------|-------|------------------|
| Permit Application No: | _____ | NWP Reissuance   |
| Date Issued:           | _____ | 12 October 2006  |
| Comments Due:          | _____ | 27 November 2006 |

## **NATIONWIDE PERMIT REISSUANCE REQUEST FOR COMMENTS**

On September 26, 2006, the U.S. Army Corps of Engineers published in the Federal Register its proposal to reissue its nationwide permits (NWP).

Nationwide permits are general permits issued on a nationwide basis to streamline the authorization of activities that result in minimal individual and cumulative adverse effects on the aquatic environment. Many of the proposed NWPs require notification to the district engineer before commencing the work, to ensure that the activities authorized by those NWPs have minimal individual and cumulative adverse impacts on the aquatic environment.

National Issues Concerning the Proposed NWPs: The Federal Register notice is the public's opportunity to comment on the proposed NWPs, general conditions, and definitions. Comments on national issues relating to these NWPs should be submitted to docket number COE-2006-0005 at [www.regulations.gov](http://www.regulations.gov). Instructions for submitting comments are provided in the September 26, 2006, Federal Register notice. Comments on the proposed NWPs are due by November 27, 2006.

Regional Issues Concerning the Proposed NWPs, Including Regional Conditioning: Division engineers are authorized to add regional conditions specific to the needs and/or requirements of a particular region or state. Regional conditions are important mechanisms to ensure that impacts to the aquatic environment authorized by the NWPs are minimal, both individually and cumulatively. Division engineers may also suspend or revoke specific NWPs in certain geographic areas (e.g., states or watersheds) or high-value aquatic systems where impacts authorized by those NWPs may be more than minimal. An enclosure for this public notice (Enclosure 1) lists the proposed regional conditions currently under consideration by the South Pacific Division and the Southwestern Division for Texas, including the Albuquerque District, the Tulsa District, the Fort Worth District, and the Galveston District. As the lead district for the Corps Regulatory Program within Texas, the Galveston District is seeking comments on the proposed regional conditions and seeking comments on the need for additional regional

conditions to help ensure that impacts authorized by the proposed NWP's are minimal. Unless otherwise noted, all proposed regional conditions listed on this enclosure are applicable for activities in Texas. Comments on regional issues relating to the proposed NWP's and regional conditions are to be sent to Galveston District, Regulatory Branch, 2000 Fort Point Road, Galveston, Texas 77550, Attn: Denise Sloan [(409)766-3962]. Comments relating to regional conditions are due by November 27, 2006. Similar public notices proposing regional conditions in other regions or States are being published concurrently by other division or district offices.

In conjunction with the Federal Register notice, Corps districts will be announcing proposed regional conditions for these NWP's for public comment. When the final NWP's are issued, the final regional conditions will be issued at the same time so that the States and Tribes can make their Clean Water Act Section 401 water quality certification and Coastal Zone Management Act (CZMA) consistency determination decisions. The 401/CZMA decisions must be made within 60 days of the Federal Register notice announcing the issuance of the NWP's. After that 60-day period, the NWP's and the regional conditions will become effective.

Draft decision documents, which include environmental documentation required by the National Environmental Policy Act, have been prepared by Corps Headquarters. The decision documents will address compliance of the NWP's with the requirements for issuance under general permit authority. These documents, as well as the proposed NWP's, are available for viewing at the above address or on the Internet at the [www.regulations.gov](http://www.regulations.gov) site (docket ID number COE-2006-0005). Final decision documents will be prepared for those NWP's that are issued. In addition, supplemental decision documents will be issued by division engineers to address their determinations concerning regional conditions for the NWP's.

Enclosed is an index of the proposed NWP's and conditions. Anyone wishing to provide comments may obtain a full text copy of the NWP's through [www.regulations.gov](http://www.regulations.gov) (docket ID number COE-2006-0005), the Corps home page or the Federal Register address listed below.

Internet addresses:

Copies of the Federal Register notice and the draft decision documents will also be available at <http://www.regulations.gov> in docket ID number COE-2006-0005. The Corps home page is: <http://www.usace.army.mil/inet/functions/cw/cecwo/reg/>. As an alternate, internet users can access the Federal Register through the Government Printing Office (GPO) at <http://www.gpoaccess.gov/fr/index.html>.

## **Index of Proposed Nationwide Permits, Conditions, and Definitions**

### **Proposed Nationwide Permits**

1. Aids to Navigation
2. Structures in Artificial Canals
3. Maintenance
4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
5. Scientific Measurement Devices
6. Survey Activities
7. Outfall Structures and Associated Intake Structures
8. Oil and Gas Structures on the Outer Continental Shelf
9. Structures in Fleeting and Anchorage Areas
10. Mooring Buoys
11. Temporary Recreational Structures
12. Utility Line Activities
13. Bank Stabilization
14. Linear Transportation Projects
15. U.S. Coast Guard Approved Bridges
16. Return Water From Upland Contained Disposal Areas
17. Hydropower Projects
18. Minor Discharges
19. Minor Dredging
20. Oil Spill Cleanup
21. Surface Coal Mining Operations
22. Removal of Vessels
23. Approved Categorical Exclusions
24. Indian Tribe or State Administered Section 404 Programs
25. Structural Discharges
26. [Reserved]
27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities
28. Modifications of Existing Marinas
29. Residential Developments
30. Moist Soil Management for Wildlife
31. Maintenance of Existing Flood Control Facilities
32. Completed Enforcement Actions
33. Temporary Construction, Access, and Dewatering
34. Cranberry Production Activities
35. Maintenance Dredging of Existing Basins
36. Boat Ramps
37. Emergency Watershed Protection and Rehabilitation
38. Cleanup of Hazardous and Toxic Waste

- 39. Commercial and Institutional Developments
- 40. Agricultural Activities
- 41. Reshaping Existing Drainage Ditches
- 42. Recreational Facilities
- 43. Stormwater Management Facilities
- 44. Mining Activities
  - A. Emergency Repair Activities
  - B. Discharges into Ditches and Canals
  - C. Pipeline Safety Program Designated Time Sensitive Inspections and Repairs
  - D. Commercial Shellfish Aquaculture Activities
  - E. Coal Remining Activities
  - F. Underground Coal Mining Activities

#### **Proposed Nationwide Permit General Conditions**

- 1. Navigation
- 2. Aquatic Life Movements
- 3. Spawning Areas
- 4. Migratory Bird Breeding Areas
- 5. Shellfish Beds
- 6. Suitable Material
- 7. Water Supply Intakes
- 8. Adverse Effects from Impoundments
- 9. Management of Water Flows
- 10. Fills Within 100-Year Floodplains
- 11. Equipment
- 12. Soil Erosion and Sediment Controls
- 13. Removal of Temporary Fills
- 14. Proper Maintenance
- 15. Wild and Scenic Rivers
- 16. Tribal Rights
- 17. Endangered Species
- 18. Historic Properties
- 19. Designated Critical Resource Waters
- 20. Mitigation
- 21. Water Quality
- 22. Coastal Zone Management
- 23. Regional and Case-by-Case Conditions
- 24. Use of Multiple Nationwide Permits
- 25. Transfer of Nationwide Permit Verifications
- 26. Compliance Certification
- 27. Pre-Construction Notification

## **Proposed Nationwide Permit Definitions**

Best management practices (BMPs)  
Compensatory mitigation  
Currently serviceable  
Enhancement  
Ephemeral stream  
Establishment (creation)  
Independent utility  
Intermittent stream  
Loss of waters of the United States  
Non-tidal wetland  
Open water  
Perennial stream  
Practicable  
Pre-construction notification  
Preservation  
Re-establishment  
Rehabilitation  
Restoration  
Riffle and pool complex  
Riparian areas  
Single and complete project  
Stormwater management  
Stormwater management facilities  
Stream bed  
Stream channelization  
Structure  
Tidal wetland  
Vegetated shallows  
Waterbody

PROPOSED  
U.S. ARMY CORPS OF ENGINEERS  
REGIONAL CONDITIONS FOR NATIONWIDE PERMITS  
TEXAS

***The following regional conditions apply only within the State of Texas.***

The following regional conditions apply throughout the State of Texas:

1. For all discharges proposed for authorization under nationwide permits (NWP) 3, 6, 7, 12, 14, 18, 19, 25, 27, 29, 39, 40, 41, 42, 43, and 44, into the following habitat types or specific areas, the applicant shall notify the appropriate District Engineer in accordance with the NWP General Condition 27. The Corps will coordinate with the resource agencies as specified in NWP General Condition 27(d). The habitat types or areas are:

a. Wetlands, typically referred to as pitcher plant bogs, that are characterized by an organic surface soil layer and include vegetation such as pitcher plants (Sarracenia sp.), sundews (Drosera sp.), and sphagnum moss (Sphagnum sp.).

b. Baldcypress-Tupelo Swamps: Wetlands comprised predominantly of baldcypress trees (Taxodium distichum), and water tupelo trees (Nyssa aquatica), that are occasionally or regularly flooded by fresh water. Common associates include red maple (Acer rubrum), swamp privet (Forestiera acuminata), green ash (Fraxinus pennsylvanica) and water elm (Planera aquatica). Associated herbaceous species include lizard's tail (Saururus cernuus), water mermaid weed (Proserpinaca spp.), buttonbush (Cephalanthus occidentalis) and smartweed (Polygonum spp.). (Eyre, F. H. Forest Cover Types of the United States and Canada. 1980. Society of American Foresters, 5400 Grosvenor Lane, Washington, D.C. 20014. Library of Congress Catalog Card No. 80-54185)

**The following regional conditions apply only within the Fort Worth District:**

2. For all discharges proposed for authorization under nationwide permits (NWP) 3, 6, 7, 12, 14, 18, 19, 25, 27, 29, 39, 40, 41, 42, 43, and 44, into the area of Caddo Lake within Texas that is designated as a "Wetland of International Importance" under the Ramsar Convention, the applicant shall notify the Fort Worth District Engineer in accordance with the NWP General Condition 27. The Corps will coordinate with the resource agencies as specified in NWP General Condition 27(d).

3. For all discharges proposed for authorization under NWP 43 that occur in forested wetlands, the applicant shall notify the Fort Worth District Engineer in accordance with the NWP General Condition 27. The Corps will coordinate with the resource agencies as specified in NWP General Condition 27(d).

4. For all discharges proposed for authorization under any NWP in Dallas, Denton, and Tarrant Counties that are within the study area of the "Final Regional Environmental Impact Statement (EIS), Trinity River and Tributaries" (May 1986), the applicant shall meet the criteria and follow the guidelines specified in Section III of the Record of Decision for the Regional EIS, including the hydraulic impact requirements. A copy of these guidelines is available upon request from the Fort Worth District and at the District website [www.swf.usace.army.mil](http://www.swf.usace.army.mil) (select "Permits").

**The following regional conditions apply only within the Galveston District:**

5. Nationwide permit 12 shall not be used to authorize discharges within 500 feet of a seagrass bed or oyster reef.

6. Nationwide permit (NWP) 6 shall not be used to authorize 3-D seismic test discharges conducted within tidal waters of the United States within the coastal zone of Texas. For all 3-D seismic test discharges conducted within non-tidal waters of the United States within the coastal zone of Texas pursuant to NWP 6, the applicant shall notify the District Engineer in accordance with the NWP General Condition 27.

7. Nationwide permits 6, 7, 12, 13, 14, 18, 19, 25, 29, 39, 40, 41, 42, 43, 44, B, and D shall not be used to authorize discharges into the following waters of the United States within the coastal zone of Texas: Mangrove marshes, wetlands within the Texas Gulf Coastal Plain that are occasionally or regularly flooded by brackish or saline water and have more than 40 percent cover by woody plants. The dominant woody species in this environment is the black mangrove (Avicennia germinans) with a dominant herbaceous species component of smooth cordgrass (Spartina alterniflora). (Preliminary Guide to Wetlands of the Gulf Coastal Plain. 1978. Technical Report - U.S. Army Engineer Waterways Experiment Station: Y-78-5. P.O. Box 631, Vicksburg, Miss. 39180.)

8. For all discharges proposed for authorization under nationwide permits (NWP) 6, 7, 12, 13, 14, 18, 19, 25, 29, 39, 40, 41, 42, 43, 44, B, and D, into the following waters of the United States within the coastal zone of Texas, the applicant shall notify the appropriate District Engineer in accordance with the NWP General Condition 27: Coastal Dune Swales, "wetlands and other waters of the United States that are formed as depressions within and among multiple beach ridge barriers, dune complexes, or dune areas adjacent to beaches fronting the tidal waters of the Gulf of Mexico and adjacent to the tidal waters of bays and estuaries. Coastal dune swales are generally comprised either of impermeable muds that act as reservoirs which collect precipitation or of groundwater nourished wetlands in sandy soils. As such, they generally have a high fresh to brackish water table. Vegetation species characteristically found in coastal dune swales include but are not limited to marshhay cordgrass (Spartina patens), gulfdune paspalum (Paspalum monostachyum), bulrush (Scirpus spp.), seashore paspalum (Paspalum vaginatum), common reed (Phragmites australis), groundsel bush (Baccharis halimifolia), rattlebush (Sesbania drummondii), camphor weed (Pluchea camphorata), smartweed (Polygonum spp.), water hyssop (Bacopa monnieri), cattail (Typha spp.), umbrella sedge (Cyperus spp.), softrush (Juncus spp.), sedge (Carex spp.), beakrush (Rhynchospora spp.), frog-fruit (Phyla spp.), duckweed (Lemna spp.), buttonweed (Diodia virginiana), mist flower (Eupatorium coelestinum), creeping spotflower (Acmella oppositifolia var. *repens*), pennywort (Hydrocotyle spp.), and bushy bluestem (Andropogon glomeratus)." (U.S. Fish and Wildlife Service, Houston, Texas, and the Texas General Land Office, Austin, Texas).

9. For all discharges and work proposed in tidal waters under nationwide permits (NWP) 14 and 18, the applicant shall notify the Galveston District Engineer in accordance with the NWP General Condition 27. The Corps will coordinate with the National Marine Fisheries Service in accordance with NWP General Condition 27(d).

10. For all discharges exceeding 10 cubic yards below the plane of the ordinary high water mark or the high tide line proposed into special aquatic sites, including wetlands, under nationwide permit (NWP) 6, the the applicant shall notify the Galveston District Engineer in accordance with the NWP General Condition 27. The pre-construction notification must state the time period for which the temporary fill is proposed, and must include a restoration plan for the special aquatic sites.

## U.S. Army Corps of Engineers Districts within the State of Texas

